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**BEFORE THE
DIVISION OF MEDICAL QUALITY
MEDICAL BOARD OF CALIFORNIA
DEPARTMENT OF CONSUMER AFFAIRS
STATE OF CALIFORNIA**

In the Matter of the Accusation Against:

PEJMAN MALEKI, M.D.
1603 Reggio Aisle
Irvine, CA 92606

Physician & Surgeon Certificate No. A 66636

Respondent.

Case No. 04-2001-122412

OAH No.

**DEFAULT DECISION
AND ORDER**

[Gov. Code, §11520]

FINDINGS OF FACT

1. On or about December 28, 2001, Complainant Ron Joseph, in his official capacity as Executive Director of the Medical Board of California, Department of Consumer Affairs, State of California, filed Accusation No. 04-2001-122412 against Pejman Maleki, M.D. (Respondent) before the Division of Medical Quality (Division).

2. On or about October 2, 1998, the Medical Board of California issued Physician & Surgeon Certificate No. A 66636 to Respondent. The Physician & Surgeon Certificate was in full force and effect at all times relevant to the charges brought herein and will expire on July 31, 2002, unless renewed.

3. On or about December 28, 2001, Marilyn Ansak, an employee of the Complainant Agency, served by Certified Mail a copy of the Accusation No. 04-2001-122412, Statement to Respondent, Notice of Defense, Request for Discovery, and Government Code sections 11507.5, 11507.6, and 11507.7 to Respondent's address of record with the Division, which was and is 1603 Reggio Aisle, Irvine, CA 92606. A copy of the Accusation, the related documents, and Declaration of Service are attached as exhibit A, and are incorporated herein by reference.

4. Service of the Accusation was effective as a matter of law under the provisions of Government Code section 11505, subdivision (c).

5. On or about January 19, 2002, the aforementioned documents were returned by the U.S. Postal Service marked "Unclaimed." A copy of the postal returned documents are attached hereto as exhibit B, and are incorporated herein by reference.

6. Government Code section 11506 states, in pertinent part:

"(c) The respondent shall be entitled to a hearing on the merits if the respondent files a notice of defense, and the notice shall be deemed a specific denial of all parts of the accusation not expressly admitted. Failure to file a notice of defense shall constitute a waiver of respondent's right to a hearing, but the agency in its discretion may nevertheless grant a hearing."

7. Respondent failed to file a Notice of Defense within 15 days after service upon him of the Accusation, and therefore waived his right to a hearing on the merits of Accusation No. 04-2001-122412.

8. California Government Code section 11520 states, in pertinent part:

"(a) If the respondent either fails to file a notice of defense or to appear at the hearing, the agency may take action based upon the respondent's express admissions or upon other evidence and affidavits may be used as evidence without any notice to respondent."

9. Pursuant to its authority under Government Code section 11520, the Division finds Respondent is in default. The Division will take action without further hearing and, based on Respondent's express admissions by way of default and the evidence before it, contained in exhibits A, B and C, finds that the allegations in Accusation No. 04-2001-122412 are true.

DETERMINATION OF ISSUES

1. Based on the foregoing findings of fact, Respondent Pejman Maleki, M.D. has subjected his Physician & Surgeon Certificate No. A 66636 to discipline.

2. A copy of the Accusation and the related documents and Declaration of Service are attached.

3. The agency has jurisdiction to adjudicate this case by default.

4. The Division of Medical Quality Medical Board of California is

1 authorized to revoke Respondent's Physician & Surgeon Certificate based upon the following
2 violations alleged in the Accusation:

- 3 a. Business and Professions Code ("Code") section 2239 for
4 dangerous use of controlled substances;
- 5 b. Code sections 2350 and 2354 for failure to comply with the
6 requirements of the Diversion Program;
- 7 c. Code section 2234 for unprofessional conduct; and
- 8 d. Code section 2262 for falsification of medical records.


9 ORDER

10 IT IS SO ORDERED that Physician & Surgeon Certificate No. A 66636,
11 heretofore issued to Respondent Pejman Maleki, M.D., is revoked.

12 Pursuant to Government Code section 11520, subdivision (c), Respondent may
13 serve a written motion requesting that the Decision be vacated and stating the grounds relied on
14 within seven (7) days after service of the Decision on Respondent. The agency in its discretion
15 may vacate the Decision and grant a hearing on a showing of good cause, as defined in the
16 statute.

17 This Decision shall become effective on July 18, 2002.

18 It is so ORDERED June 18, 2002

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20 _____
21 FOR THE DIVISION OF MEDICAL QUALITY
22 MEDICAL BOARD OF CALIFORNIA
23 DEPARTMENT OF CONSUMER AFFAIRS

23 Attachments:

- 24 Exhibit A: Accusation No.04-2001-122412, Related Documents, and Declaration of Service
- 25 Exhibit B: Postal Return Documents
- 26 Exhibit C: Evidence Packet

27 DOJ docket number:03573160-LA01 2478
28 default decision.wpt 10/14/01

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Attorneys for Complainant

FILED
STATE OF CALIFORNIA
MEDICAL BOARD OF CALIFORNIA
SACRAMENTO December 28 20 01
BY: M. Bush ANALYST

BEFORE THE
DIVISION OF MEDICAL QUALITY
MEDICAL BOARD OF CALIFORNIA
DEPARTMENT OF CONSUMER AFFAIRS
STATE OF CALIFORNIA

In the Matter of the Accusation Against:

PEJMAN MALEKI, M.D.,
1603 Reggio Aisle
Irvine, CA 92606

Physician & Surgeon Certificate No. A 66636

Respondent.

Case No. 04-2001-122412

OAH No.

ACCUSATION

Complainant alleges:

PARTIES

1. Ron Joseph (Complainant) brings this Accusation solely in his official capacity as the Executive Director of the Medical Board of California, Department of Consumer Affairs.

2. On or about October 2, 1998, the Medical Board of California issued Physician & Surgeon Certificate Number A 66636 to Pejman Maleki, M.D. (Respondent). The Physician & Surgeon Certificate was in full force and effect at all times relevant to the charges brought herein and will expire on July 31, 2002, unless renewed.

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JURISDICTION

3. This Accusation is brought before the Division of Medical Quality, Medical Board of California (Division), under the authority of the following sections of the Business and Professions Code (Code).

4. Section 2227 of the Code provides that a licensee who is found guilty under the Medical Practice Act may have his or her license revoked, suspended for a period not to exceed one year, placed on probation and required to pay the costs of probation monitoring, or such other action taken in relation to discipline as the Division deems proper.

5. Section 2234 of the Code states:

“The Division of Medical Quality shall take action against any licensee who is charged with unprofessional conduct. In addition to other provisions of this article, unprofessional conduct includes, but is not limited to, the following:

“(a) Violating or attempting to violate, directly or indirectly, or assisting in or abetting the violation of, or conspiring to violate, any provision of this chapter [Chapter 5, the Medical Practice Act].

“(b) Gross negligence.

“(c) Repeated negligent acts.

“(d) Incompetence.

“(e) The commission of any act involving dishonesty or corruption which is substantially related to the qualifications, functions, or duties of a physician and surgeon.

“(f) Any action or conduct which would have warranted the denial of a certificate.”

6. Section 2262 of the Code states, in pertinent part:

“Altering or modifying the medical record of any person, with fraudulent intent, or creating any false medical record, with fraudulent intent, constitutes unprofessional conduct.

7. Section 2239 of the Code states, in pertinent part:

“(a) The use or prescribing for or administering to himself or herself, of any

1 controlled substance; or the use of any of the dangerous drugs specified in Section 4022,
2 or of alcoholic beverages, to the extent, or in such a manner as to be dangerous or
3 injurious to the licensee, or to any other person or to the public, or to the extent that such
4 use impairs the ability of the licensee to practice medicine safely . . . constitutes
5 unprofessional conduct.”

6 8. Section 14124.12 of the Welfare and Institutions Code states, in pertinent
7 part:

8 “(a) Upon receipt of written notice from the Medical Board of California, the
9 Osteopathic Medical Board of California, or the Board of Dental Examiners of California,
10 that a licensee's license has been placed on probation as a result of a disciplinary action,
11 the department may not reimburse any Medi-Cal claim for the type of surgical service or
12 invasive procedure that gave rise to the probation, including any dental surgery or
13 invasive procedure, that was performed by the licensee on or after the effective date of
14 probation and until the termination of all probationary terms and conditions or until the
15 probationary period has ended, whichever occurs first. This section shall apply except in
16 any case in which the relevant licensing board determines that compelling circumstances
17 warrant the continued reimbursement during the probationary period of any Medi-Cal
18 claim, including any claim for dental services, as so described. In such a case, the
19 department shall continue to reimburse the licensee for all procedures, except for those
20 invasive or surgical procedures for which the licensee was placed on probation.”

21 9. Section 2350 of the Code states, in pertinent part:

22 “(a) The division shall establish criteria for the acceptance, denial, or termination
23 of physicians and surgeons in a diversion program. Only those physicians and surgeons
24 who have voluntarily requested diversion treatment and supervision by a committee shall
25 participate in a program.

26 * * * * *

27 “(c) Neither acceptance into nor participation in the diversion program shall
28 preclude the division from investigating or continuing to investigate any physician or

1 surgeon for any unprofessional conduct committed before, during, or after participation in
2 the diversion program.

3 “(d) Neither acceptance into nor participation in the diversion program shall
4 preclude the division from taking disciplinary action or continuing to take disciplinary
5 action against any physician or surgeon for any unprofessional conduct committed before,
6 during, or after participation in the diversion program, except for that conduct which
7 resulted in the physician and surgeon's referral to the diversion program.

8 “(e) Any physician and surgeon terminated from the diversion program for failure
9 to comply with program requirements is subject to disciplinary action by the division for
10 acts committed before, during, and after participation in the diversion program. The
11 division shall not be precluded from taking disciplinary action for violations identified in
12 the statement of understanding described in subdivision (b) if a physician and surgeon is
13 terminated from the diversion program for failure to comply with program requirements.
14 The termination of a physician and surgeon who has been referred to the diversion
15 program pursuant to subdivision (b) shall be reported by the program manager to the
16 division.

17 10. Section 2354 of the Code states:

18 “Each physician and surgeon who requests participation in a diversion program
19 shall agree to cooperate with the treatment and monitoring program designed by the
20 program manager. Any failure to complete successfully a treatment and monitoring
21 program or an acceptable substitute program may result in the filing of an accusation for
22 discipline which may include any acts giving rise to the original diversion.”

23 11. Section 125.3 of the Code provides, in pertinent part, that the Division
24 may request the administrative law judge to direct a licensee found to have committed a
25 violation or violations of the licensing act to pay a sum not to exceed the reasonable costs of the
26 investigation and enforcement of the case.

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1 FIRST CAUSE FOR DISCIPLINE

2 (Dangerous Use of Controlled Substances)

3 12. Respondent is subject to disciplinary action under section 2239 in that he
4 used controlled substances in such a manner as to be dangerous to himself, to the public, and to
5 the extent that such use impairs his ability to practice medicine safely. The circumstances are as
6 follows:

7 a. In or around October of 1999, Respondent became depressed as a
8 result of difficulties with his work, his professors, and his work schedule during his
9 Residency with the University of California, Irvine Department of Anesthesiology. He
10 consequently started injecting himself with Fentanyl, a derivative of Opium used for
11 anesthetic purposes, which he obtained from the hospital. By the middle of February
12 2000, Respondent took leave from work for one month in order to deal with his
13 depression. Without access to Fentanyl, however, his depression worsened.

14 b. Respondent returned to work in April of 2000. He was soon
15 thereafter located in a fetal position while administering anesthesia to a patient in the
16 Operating Room during a procedure at L.A. Children's Hospital. Respondent was
17 subsequently relieved of his clinical duties for three months and was referred for a
18 psychological evaluation. He was later diagnosed with depression and was prescribed
19 Paxil. While away from work, he stopped using Fentanyl.

20 b. When Respondent returned to work in July of 2000, he resumed
21 his use of Fentanyl. On or about July 7, 2000, the Department's drug log indicated that
22 Respondent had checked out Fentanyl and Versed (a sedative), for his patients but did not
23 document their use or return the drugs. The Director of Anesthesia was soon thereafter
24 informed of his drug use and subsequently contacted someone at the Medical Board of
25 California Diversion Program. Respondent admitted his drug use and willingly entered
26 into the Diversion Program.

27 d. On or about November 16, 2000, Respondent signed a Physician
28 Diversion Program Agreement. Among the various terms and conditions, the Agreement

1 provided that Respondent would abstain from the use of psychotropic drugs except those
2 prescribed by another physician and approved by Diversion. It also provided that
3 Respondent would be subject to biological fluid testing during the program.

4 e. In or around January of 2001, Respondent signed a contract with
5 the University of California, Irvine, Department of Anesthesiology for his return to his
6 residency as an impaired physician. One of the terms of the contract provided that one
7 incidence of relapse into chemical dependency would result in immediate termination of
8 Respondent's residency.

9 f. On or about April 9, 2001, Respondent's biological fluid sample
10 collected on that date tested positive for Cocaine. On or about April 23, 2001, his
11 biological fluid sample collected on April 23, 2001, tested positive for Phenobarbital.

12 g. On or about May 30, 2001, Respondent was terminated from the
13 Diversion Program as he was determined to be a threat to the public health or safety. He
14 was terminated from the University of California, Irvine, Department of Anesthesiology
15 on May 31, 2001 for violating the contract with the hospital.

16 h. On or about July 3, 2001, Respondent's locker at the hospital was
17 found to contain empty syringes labeled Fentanyl and Versed, and three prescription
18 bottles for Vicodin, Ultram, and Proscar.

19 i. On or about July 26, 2001, during an interview with two
20 investigators for the Medical Board of California, Respondent stated: "I'm an
21 addict . . . my drug of choice was Fentanyl." He also stated that he would give an
22 anesthesia patient a portion of the drug that he would check out and keep the remainder
23 for himself. Respondent admitted that he falsified the amount of the drug that he gave to
24 the patients.

25 SECOND CAUSE FOR DISCIPLINE

26 (Failure to Comply With Diversion Program Requirements)

27 13. Respondent is subject to disciplinary action under sections 2350 and 2354
28 in that he failed to comply with the with the requirements of the Diversion Program. The

1 circumstances are as follows:

2 a. The facts and circumstances alleged in paragraph 12,
3 subparagraphs (d) and (f) are incorporated herein by reference.

4 THIRD CAUSE FOR DISCIPLINE

5 (Unprofessional Conduct)

6 14. Respondent is subject to disciplinary action under section 2234 in that he
7 engaged in unprofessional conduct. The circumstances are as follows:

8 a. The facts and circumstances alleged in paragraph 12,
9 subparagraphs (a) through (i), inclusive, are incorporated herein by reference.

10 FOURTH CAUSE FOR DISCIPLINE

11 (Falsifying Medical Record)

12 15. Respondent is subject to disciplinary action under section 2262 in that he
13 falsified the drug log for the University of California, Irvine, Department of Anesthesiology. The
14 circumstances are as follows:

15 a. The facts and circumstances alleged in paragraph 12,
16 subparagraphs (a) through (i), inclusive, are incorporated herein by reference.

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1 PRAYER

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3 WHEREFORE, Complainant requests that a hearing be held on the matters herein
4 alleged, and that following the hearing, the Division of Medical Quality issue a decision:


5 1. Revoking or suspending Physician & Surgeon Certificate Number A
6 66636, issued to Pejman Maleki, M.D.;

7 2. Revoking, suspending or denying approval of Pejman Maleki, M.D.'s
8 authority to supervise physician's assistants, pursuant to section 3527 of the Code;

9 3. Ordering Pejman Maleki, M.D. to pay the Division of Medical Quality the
10 reasonable costs of the investigation and enforcement of this case, and, if placed on probation,
11 the costs of probation monitoring;

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13 4. Taking such other and further action as deemed necessary and proper.

14 DATED: December 28, 2001.

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17 _____
18 RON JOSEPH
19 Executive Director
20 Medical Board of California
21 Department of Consumer Affairs
22 State of California
23 Complainant

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